

Election Assistance Commission

§ 9405.9

request for which expedited processing is granted.

(i) Any person denied access to records by the Commission shall be notified immediately of the denial, including the reasons for the decision and notified of his or her right to appeal the adverse determination to the Commission.

(j) The date of receipt of a request under this part shall be the date on which the Chief FOIA Officer actually receives the request.

(k) Each request received by the Chief FOIA Officer will be assigned an individualized tracking number. Requesters may call (866) 747-1471 and, using the tracking number, obtain information about the request, including the date on which the Commission originally received the request and an estimated date on which the Commission will complete action on the request.

§ 9405.8 Appeals of denials of requests for records.

(a) Any person who has been notified under § 9405.7(i) that his/her request for inspection of a record or for a copy of a record has been denied, or who has received no response within 20 working days (or within such extended period as is permitted under § 9405.7(d)) after the request has been received by the Commission, or who has received no response within 20 days after a request for expedited processing has been received by the Commission, may appeal the adverse determination or the failure to respond by requesting the Commission to direct that the record be made available or that the expedited processing shall occur.

(b) The appeal request shall be in writing, shall clearly and prominently state on the envelope or other cover and at the top of the first page "FOIA Appeal," and shall identify the record in the form in which it was originally requested.

(c) The appeal request should be delivered or addressed to the Chief FOIA Officer, U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005.

(d) The requester may state facts and cite legal or other authorities as he or

she deems appropriate in support of the appeal request.

(e) The Commission will make a determination with respect to any appeal within 20 working days after receipt of the appeal (or within such extended period as is permitted under § 9405.7). If, on appeal, the denial of the request for a record or a copy is in whole or in part upheld, the Commission shall advise the requester of the denial and shall notify him or her of the provisions for judicial review of that determination as set forth in 5 U.S.C. 552(a)(4).

(f) Because of the risk of misunderstanding inherent in oral communications, the Commission will not entertain any appeal from an alleged denial or failure to comply with an oral request. Any person who has orally requested a copy of a record that he or she believes to have been improperly denied should resubmit the request in writing as set forth in § 9405.7.

§ 9405.9 Fees in general.

(a) *Generally.* The Commission will charge fees that recoup the full allowable direct costs it incurs. The Commission will use the most efficient and least costly means to comply with requests for documentation.

(b) *Manual searches for records.* The Commission will charge fees at the salary rate(s) (basic pay plus 16 percent) of the employee(s) making the search.

(c) *Computer searches for records.* The Commission will charge the actual direct cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search.

(d) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review (*i.e.*, the review undertaken the first time the Commission analyzes the applicability of a specific exemption to a particular record or portion of a record). Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may

be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review are assessable. The Commission will charge at the salary rate(s) (basic pay plus 16 percent) of the employee(s) reviewing records.

(e) *Duplication of records.* Records will be duplicated at a rate of fifteen (15) cents per page. For copies prepared by computers, such as tapes, CDs, DVDs, or printouts, the Commission shall charge the actual cost, including operator time, of production. For other methods of reproduction or duplication, the Commission will charge the actual direct costs of producing the document(s). If the Commission estimates that duplication charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(f) *Other charges.* The Commission will recover the full costs of providing services such as those enumerated below when it provides them in response to a direct request for such services:

(1) Certifying that records are true copies; or

(2) Sending records by special methods such as express mail.

(g) *Payment of fees.* Remittance shall be in the form either of a personal check or bank draft drawn on a bank in the United States or a postal money order. Remittance shall be made payable to the order of the Treasury of the United States and mailed to the Chief FOIA Officer, U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005.

(h) *Receipt of fees.* A receipt for fees paid will be given upon request. Refund of fees paid for services actually rendered will not be made.

(i) *Restrictions on assessing fees.* The Commission shall not assess search fees or duplication fees under this paragraph if the Commission fails to comply with any time limit in these regulations. The Commission will not

charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. With the exception of requesters seeking documents for a commercial use, the Commission will not charge fees for the first 100 pages of duplication and the first two hours of search time.

(1) The elements to be considered in determining the “cost of collecting a fee” are the administrative costs of receiving and recording a requester’s remittance and processing the fee for deposit in the Treasury Department’s special account.

(2) For purposes of these restrictions on assessment of fees, the word “pages” means paper copies of 8.5” x 11” or 11” x 14.” Thus, requesters are not entitled to 100 computer disks, for example.

(3) For purposes of these restrictions on assessment of fees, the term “search time” means manual search. To apply this term to searches made by computer, the Commission will determine the hourly cost of operating the CPU and the operator’s hourly salary plus 16 percent. When the cost of such search (including operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of salary of the person performing the search (*i.e.*, the operator), the Commission will begin assessing charges for computer search.

§ 9405.10 Fees to be charged—categories of requesters.

There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters.

(a) *Commercial use requesters.* When the Commission receives a request for documents for commercial use, it will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. Commercial use requesters are neither entitled to two hours of free search time nor 100 free pages of duplication. The Commission may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (see § 9405.11(b)).